



## **DECISION and FINDINGS**

**Date of adoption: 11 November 2015**

**Case No. 2012-22**

**Desanka and Zoran Stanisic**

**Against**

**EULEX**

The Human Rights Review Panel, sitting on 11 November 2015  
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member  
Mr Guénaël METTRAUX, Member  
Ms Katja DOMINIK, Member

Assisted by  
Mr John J. RYAN, Senior Legal Officer  
Ms Joanna MARSZALIK, Legal Officer  
Mr Paul LANDERS, Legal Officer

Having considered the aforementioned complaint, introduced pursuant to Council Joint Action 2008/124/CFSP of 4 February 2008, the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel and the Rules of Procedure of the Panel as last amended on 15 January 2013,

Having deliberated, decides as follows:

### **PROCEDURE**

1. The complaint was registered on 20 December 2012.
2. On 7 June 2013, the Panel decided to give notice of the complaint to the Head of Mission of EULEX Kosovo (HoM), inviting him to submit written observations on the complaint. It was also decided to examine the merits of the application at the same time as its admissibility (pursuant to Rule 30 paragraphs 1 and 2 of the Rules of Procedure of the Panel, hereafter ROP).

3. The observations of the HoM were received on 15 August 2013 after which they were communicated to the complainants for their additional observations.
4. On 6 September 2013, the complainants sent in their observations, which were sent to HoM for information.
5. In reply to the complainants' comments, the HoM submitted additional observations on 4 February 2014.
6. The complainants commented on the HoM's observations on 20 February 2014.
7. The HoM provided additional submissions on 25 August 2014.
8. The complainants submitted their comments on 9 October 2014.
9. The HoM replied to the complainants' comments on 20 January 2015.

## **FACTS**

### **I. CIRCUMSTANCES OF THE CASE**

#### **Proceedings in the case no. 1989-5/2011 (threats)**

10. The complainants allege that between 26 June 2011 and 29 June 2011, they received over 30 threatening phone calls on their mobile phones. These phone calls are said to have been made numerous times from undisclosed numbers, specifically after midnight hours. The calls included threats against life and limb and were directed against the family of the complainants. The complainants suspected a certain S.P., a high profile political figure living in Pristina, to have made these phone calls. The complainants submit that threats were made to silence them and force them to withdraw from several court proceedings against a number of individuals, including political figures in Kosovo. Those proceedings relate to cases of usurpation of property belonging to the complainants, as well as to a case of kidnapping of a family member of the complainants.
11. The complainants reported the case to, inter alia, EULEX and the Kosovo Police on 7 July 2011, the Ministry of Interior of Serbia and to the Municipal Public Prosecution Office in Pristina on 8 July 2011.
12. On 25 August and 8 September 2011, the complainants submitted supplements to their criminal report.
13. On 29 September 2011, the complainants were informed that all the information they had presented to the Kosovo Police in the case had been brought to the attention of the Municipal Public Prosecutor in

Pristina who was responsible to investigate the case. On an unspecified date thereafter, the complainants were informed that the Chief Prosecutor of the Municipal Public Prosecution Office in Pristina had decided to invite the EULEX Prosecutors to deal with the case.

14. On 30 January 2012, the complainants were informed that it was decided that a mixed team of prosecutors, including a EULEX and a Kosovo Prosecutor, would take over the case.
15. On 27 March 2012, a EULEX Prosecutor was assigned to the mixed team of prosecutors working on the case, based on an agreement between the Chief Municipal Prosecutor and the EULEX Prosecutor.
16. On 11 May 2012, based on the request of the Serbian Prosecutor, the Serbian Police (MUP) through the EULEX Regional Liaison Officer submitted documents related to the case to the Chief EULEX Prosecutor for further proceedings.
17. On 29 October 2012, the EULEX Prosecutor issued a Letter of Entrustment to the Kosovo Police with a request to identify the user of the telephone number from which threatening phone calls were made. On 1 November, he received from the Kosovo Police a report in this regard. EULEX submits that based on the case files received from the local Prosecution Office there are no voice records or transcripts of telephone conversations.
18. On 8 November 2012, the complainants received, via e-mail, a formal notice of dismissal of a criminal report from the EULEX Prosecutor. They were informed that he had decided not to pursue the prosecution in line with article 208 par. 1 of the CPCK ("no reasonable suspicion that a specific person has committed the indicated criminal offence"). The complainants were also informed of their right to further pursue the case as "private prosecutors".
19. On 16 November 2012, the complainants submitted a private bill of indictment to the Municipal Court of Pristina.

**Proceedings in the case no. 3086-2/2011 (kidnapping and other offences)**

20. On 13 June 2011, the complainants submitted a criminal report to the Municipal Public Prosecutor in Pristina. The allegations concerned offences of violation of equal status of residents of Kosovo, kidnapping (of the first complainant), illegal occupation of real property, and fraud. The above offences were allegedly committed on 1 July 1999.
21. On 2 February 2012, a EULEX Prosecutor was assigned to the mixed team of EULEX and local Prosecutors investigating the case,

following an agreement between the Chief Municipal Prosecutor and EULEX.

22. While investigating the case the mixed team examined documents relating to similar allegation previously submitted by the complainants to the UNMIK prosecutorial institutions. The UNMIK Prosecutor dismissed the complaints relating to theft and kidnapping on 15 February 2007. On 20 January 2009, the District Public Prosecutor of Pristina dismissed the criminal report concerning allegations of illegal occupation of real property, fraud and violation of equal status of residents of Kosovo, due to statutory limitations to prosecutorial actions. On an unspecified date, the confirmation judge of the Municipal Court of Pristina rejected the charges of kidnapping against three persons brought by the second complainant acting as a subsidiary prosecutor, due to the statutory limitation. On 22 February 2011, the Municipal Court of Pristina rejected the complainant's appeal against that decision.
23. In the light of the above, the mixed team of prosecutors concluded that there was no reasonable suspicion that an identifiable person committed the criminal offences at issue and that further investigation by the police would not provide any further information. They also took into account the statutory limitations and the *ne bis in idem* principle when deciding not to press the matter further.
24. On 5 November 2012, the complainants received, via email, a formal notice of dismissal of a criminal report from the EULEX Prosecutor. They were informed that he had decided not to pursue the prosecution in accordance with Article 208 par. 1 of the CPCK ("no reasonable suspicion that a specific person has committed the indicated criminal offence"). The complainants were also informed of their right to further pursue the case as "private prosecutors".

**Proceedings in the case no. 3985-8/2011 (falsifying documents and other offences)**

25. On 6 September 2011, the complainants submitted a criminal report to the Municipal Public Prosecutor of Pristina. Their allegations concerned falsifying documents, including official documents, violating equal status of residents of Kosovo, legalisation of false content: the complainants alleged that unidentified persons had intentionally hidden a case file relating to civil proceedings they were involved in.
26. On 27 March 2012, a EULEX Prosecutor was assigned to a mixed team of local and EULEX Prosecutors to work on the case.
27. The team of prosecutors concluded that it was evident that there was no reasonable suspicion that a specific person committed the alleged criminal offences and that further investigation by the police would not provide any sufficient information.

28. On 5 November 2012, the complainants received, via email, a formal notice of dismissal of a criminal report from the EULEX Prosecutor. They were informed that he had decided not to pursue the prosecution in line with Article 208 par. 1 of the CPCK (“no reasonable suspicion that a specific person has committed the indicated criminal offence”). The complainants were also informed of their right to further pursue the case as “private prosecutors”.

## II. COMPLAINTS

29. The complainants, in essence, submit that the EULEX Prosecutors, as well as the local prosecutor, abused their positions or acted in a negligent and discriminatory manner towards them. The complainants submit that they have received very serious threats against their lives by high officials of the government of Kosovo and were deprived of their property and that the EULEX Prosecutors failed to properly investigate the crimes against them.
30. The Panel shall examine the complainants’ submissions under Articles 3 (prohibition of torture), 8 (right to private life), 13 (right to an effective remedy) and 14 (non-discrimination) of the European Convention on Human Rights and Fundamental Freedoms (the Convention).

## III. RELEVANT APPLICABLE LAW

### Joint Action

31. The Articles 2 and 3 of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereafter: Joint Action), for their relevant parts, read as follows:

#### **Article 2 Mission Statement**

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.

EULEX KOSOVO, in full cooperation with the European Commission Assistance Programs, shall fulfill its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

#### **Article 3 Tasks**

In order to fulfill the Mission Statement set out in Article 2, EULEX KOSOVO shall:

- (a) monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities;

...

(d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;

(e) contribute to strengthening cooperation and coordination throughout the whole judicial process, particularly in the area of organised crime;

(f) contribute to the fight against corruption, fraud and financial crime;

## **Law on Jurisdiction**

32. The Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo (No. 03/L-053, hereafter: the Law on Jurisdiction), and more specifically its Articles 5, 7 and 8, regulate the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of Kosovo.

### **Article 5 Jurisdiction of EULEX judges for civil cases**

5.1 EULEX judges assigned to civil proceedings will have the authority to select and take responsibility, in agreement with the President of the Assembly of the EULEX Judges and according to the modalities on case selection and allocation developed by the Assembly of the EULEX Judges, over:

...

c) any new or pending property related civil cases, including the execution procedures, falling within the jurisdiction of any court in Kosovo, if:

- (i) there is a grounded suspicion of attempts to influence the impartiality or independence of the local judiciary; or
- (ii) there is a grounded suspicion that the local judiciary is not willing or unable to properly deal with the case; or
- (iii) there is a grounded suspicion of a serious violation of the fairness of the proceeding.

### **Article 7 General authority of EULEX prosecutors**

7.1 EULEX prosecutors will have the authority and responsibility to perform the functions of his or her office, including the authority to conduct criminal investigations and take responsibility for new and pending criminal investigations or proceedings, within the SPRK or within the prosecution offices to which he or she is assigned to by the Chief EULEX Prosecutor and according to the modalities as established by the present Law and by the Assembly of the EULEX Prosecutors.

### **Article 8 Competences of EULEX prosecutors in Kosovo**

8.1 The EULEX prosecutors will be competent to investigate and prosecute the crimes, that fall under the exclusive competence of the SPRK in accordance with the law that establishes the SPRK, and the crimes, including the attempt and the various form of collaboration to the crimes, listed in all items of paragraph 3 of Article 3 of this law.

## THE LAW

33. The complainants allege that EULEX actions infringed Articles 3, 8, 13 and 14 of the European Convention on Human Rights. These provisions, in so far as relevant, read:

### **Article 3 Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article 8 Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

...

### **Article 13 Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

### **Article 14 Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **Submissions by the parties**

34. In his submissions the HoM stressed the autonomous position of the EULEX Prosecutors guaranteed by the relevant provisions of the 2008 Joint Action, EULEX OPLAN and the Law on Jurisdiction. He submitted that the principle should be always taken into account when assessing actions of prosecutors in cases before the Panel.
35. The HoM submitted also that official investigations were initiated in all cases, in so far as statutory limitations and *ne bis in idem* principle allowed. As regards those impediments, the HoM maintained that EULEX cannot be held responsible for any perceived flaws in the initial proceedings carried out by UNMIK.
36. The HoM emphasised that the dismissals of the complainants' criminal reports did not constitute termination of criminal proceedings.
37. Commenting on the alleged violation of Article 3 of the Convention, the HoM said that the evidence submitted in the present case does not show that the complainants were ever subject to ill-treatment which would fall within the scope of this provision. As regards the procedural aspect of Article 3, the HoM was of a view that EULEX abided by all its positive and procedural obligations to investigate credible allegations of rights violations.

38. The HoM repeated the same reasoning when commenting on alleged violations of Article 8 of the Convention, arguing that there is no indication that the complainants' rights under this Article were infringed. Neither did EULEX neglect its positive obligations to protect those rights.
39. The HoM further maintained that, in his view, no separate issue arises under Article 13 of the Convention.
40. As regards the alleged violations of Article 14 of the Convention, the HoM submitted that no separate examination is required, since it was not shown that the complainants suffered any inequality in enjoyment of their fundamental rights under Articles 3, 8 or 13.
41. In their reply to the HoM's observations, the complainants essentially reiterated their original submissions. They maintained that EULEX violated their right to access to court while dealing with their cases.
42. The complainants repeated their dissatisfaction with the way the EULEX Prosecutors communicated with them. They submitted that they were deprived of their right to receive an explanation for the dismissal of their criminal reports and not given access to the case file, which prevented them from pursuing the criminal proceedings as subsidiary prosecutors. They said they were at a disadvantage compared to their opponent, the suspect, who is a high profile politician and, therefore, they claim, the principle of the equality of arms was not observed. They further submitted that the principle of equality would be violated where a public authority fails to provide complete and timely insight and information to a person seeking to guarantee or protect his rights.
43. The complainants stressed that they did not contest the right of the EULEX Prosecutors to decide, pursuant to the applicable law, whether a certain case should be investigated or not. Their grievance related to the fact that EULEX's dismissal of their criminal report had been sent to them by email without any explanation why such a decision had been taken. In particular, they were not informed what investigative steps had been taken. The EULEX Prosecutors never met with the complainants or expressed such wish.
44. In conclusion, the complainants stated that, if the authorities are unable to prevent a degrading treatment of a person or threats to their private and family life, they are under a positive obligation to foresee and enable effective legal mechanisms for identification and punishment of persons responsible such disturbances. According to the complainants, EULEX was required in this case to conduct a complete investigation and to inform the complainants, as the injured party, of all findings and to involve them in the investigation. They maintained that threats coming from a high governmental official resulted in strong feeling of vulnerability, humiliation and fear.



Moreover, since the summer of 1999 the complainants have been deprived of their right to their household. They also believed that, as internally displaced persons belonging to the Serbian minority, they were unequally affected and that the EULEX Prosecution should have given greater consideration to that fact.

45. The HoM submitted additional observations in reply to the complainants' comments. He maintained that the applicable legal framework contains no obligation to provide a decision to dismiss a criminal report with specific and detailed reasoning.
46. Moreover, even if the notices of dismissal in any of the cases contained shortcomings, they did not, in HoM's opinion, result in human rights violations. Unlike judicial decisions, prosecutors' decisions to dismiss a criminal complaint are not required to provide detailed reasoning by any relevant human rights instruments and the principles reflected therein.
47. The HoM added that the complainants were granted access to all three case files.
48. The complainants replied to the HoM's additional observations and reiterated their previous comments. In particular, they stated that EULEX violated their basic human rights, specifically their right to access to court.
49. The HoM replied to the complainants' observations and summarised the facts and submissions previously made. He also reiterated his view that there is no legal obligation for a prosecutor to inform an alleged injured party of the actions performed during the preliminary investigation.

### **The Panel's assessment**

#### *Mandate of the Panel (Rule 25 § 1 of the Rules of Procedure)*

50. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
51. Before considering the complaint on its merits, the Panel must decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.

52. No observations were made by the parties with regard to the admissibility of the complaint.
53. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate.
54. The Panel has already established that the actions of the EULEX Prosecutors are part of the executive mandate of the EULEX Kosovo and therefore fall in principle within the ambit of the Panel's mandate (see, for instance, *Krlić against EULEX*, no. 2012-21, 26 August 2014, § 23; *Y against EULEX*, no. 2011-28, 15 November 2012, § 35). It sees no reason here to depart from this view.

*Alleged violations of Article 3 of the Convention*

55. The Panel observes that ill-treatment must attain a minimum level of severity for it to fall within the scope of Article 3 of the Convention. The assessment of this level depends on all the circumstances of the case (see, e.g., *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
56. The Panel is not persuaded that the complainants have shown that, through its actions or omission, EULEX subjected them to any treatment such as would come within the scope of Article 3.
57. Having regard to the above, the Panel concludes that this complaint is manifestly ill-founded.

*Alleged violations of Article 8 the Convention (positive obligations)*

58. The Panel reiterates that, according to the Court's case-law, the notion of "private life" under Article 8 is a broad one and is not susceptible to exhaustive definition; it may, depending on the circumstances, cover the moral and physical integrity of the person (see the *X and Y v. the Netherlands* judgment of 26 March 1985, Series A no. 91, p. 11, § 22; *Niemietz v. Germany* judgment of 16 December 1992, Series A no. 215-B, p. 11, § 29; *Costello-Roberts v. the United Kingdom* judgment of 25 March 1993, Series A no. 247-C, pp. 60–61, §§ 34 and 36). Article 8 also protects a person's home and certain professional or business activities or premises (see, for instance, *Niemietz v. Germany* judgment cited above, § 31).
59. The Panel notes further that the failure of the authorities to safeguard a person's physical or moral integrity or to prevent attacks on their home and property can raise issues under Article 8 of the Convention in the context of their positive obligations inherent in this provision

(*X and Y v. the Netherlands*, 26 March 1985, §§ 22-23, Series A no. 91; *Odièvre v. France* [GC], no. 42326/98, § 42, ECHR 2003-III; *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, §§ 96-98, ECHR 2003-VIII).

60. Nevertheless, the Panel is not satisfied that it has been established that, in the circumstances, EULEX's actions participated or contributed in a violation of the complainants' right under Article 8 of the Convention. Whilst the complainants' Article 8 rights might have been violated by third parties, it is not been shown how EULEX's actions or omission would have participated in such a violation. In particular, it has not been established that EULEX encouraged or remained blind to these interferences. Instead, it positively sought to investigate this matter, albeit unsuccessfully. Whilst that investigation might not have been flawless, it has not been established by the complainants that EULEX's involvement in that investigation contributed to violating his Article 8 rights.
61. The Panel concludes accordingly that the facts of the case do not disclose a breach by EULEX of rights guaranteed under Article 8 of the Convention.

#### *Alleged violations of Article 13 the Convention*

62. The Panel notes that the existence of an actual breach of another substantive provision of the Convention is not a prerequisite for the application of this Article (see the *Klass and Others against Germany* judgment of 6 September 1978, Series A no. 28, p. 29, § 64), provided that their grievances under these provisions can be regarded as "arguable" in terms of the Convention (see, for instance, *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 23, § 52, *Costello-Roberts v. the United Kingdom*, cited above, § 39). The European Court of Human Rights has refrained from giving an abstract definition of the notion of arguability, preferring in each case to determine, in the light of the particular facts and the nature of the legal issues raised, whether a claim of a violation forming the basis of a complaint under Article 13 is arguable, and if so whether the requirements of this provision were met in relation thereto. In making its assessment the Court will also give consideration to its findings on the admissibility of the substantive claim (see *Ivan Atanasov v. Bulgaria*, no. 12853/03, §§ 100-101, 2 December 2010, and *Boyle and Rice*, cited above, § 54). However, the fact that a substantive claim is declared inadmissible does not necessarily exclude the operation of Article 13 (see *I.M. v. France*, no. 9152/09, § 103, 2 February 2012; *Gebre-medhin [Gaberamadhien] v. France*, no. 25389/05, §§ 55-56, ECHR 2007-II; and *M.A. v. Cyprus*, , no. 41872/10, §§ 119-121, ECHR 2013; *Asalya v. Turkey*, no.

43875/09, § 97, 15 April 2014). The Panel has adopted this approach for the purposes of the present case.

63. The scope of application of Article 13 varies depending on the nature of the applicant's complaint. In every case, however, the remedy required by Article 13 must be "effective" in practice as well as in law (see the *Aksoy v. Turkey* judgment of 18 December 1996, Reports 1996-VI, p. 2286, § 95; the *Aydın v. Turkey* judgment of 25 September 1997, Reports 1997-VI, pp. 1895-96, § 103). Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations (*D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 135, 10 October 2002). Nevertheless, where such a remedy exists, it must be effective, that is, capable of providing redress and offered reasonable prospects of success (*O'Keeffe v. Ireland* [GC], no. 35810/09, § 177, ECHR 2014).
64. The Panel notes that EULEX carried out an investigation into each and every allegation brought by the complainants. To that extent, the Mission cannot be said to have neglected to investigate altogether a particular aspect of the case. The Panel also notes that the EULEX Prosecutors took various steps to obtain relevant information – including by seeking the assistance of local and Serbian authorities. Other investigative steps were also duly taken. Furthermore, the Panel has found no indication that the complainants were discriminated against because of their ethnic background.
65. The Panel is concerned, however, by certain shortcomings in the investigative process: the apparent absence of involvement of victims in the investigative process; the absence of a reasoned explanation for the termination of proceedings in these cases.
66. Subject to legitimate considerations of confidentiality and security, victims are entitled in principle to be sufficiently involved in and informed of the process of investigation (see, generally, the Panel's decision in *L.O. against EULEX* case no.2014-32, 12 November 2015, §§ 60-61; *Ahmet Özkan and Others v. Turkey*, cited above, §§ 311-314, 6 April 2004; *Isayeva v. Russia*, cited above, § 211-214; *Al-Skeini and Others v. United Kingdom*, no.55721/07, 7 July 2011, §167, ECHR 2011).
67. Furthermore, a requirement that a sufficiently reasoned explanation should be given for closing an investigation provides a necessary element of public scrutiny and accountability (see *I against EULEX*, case no. 2013-01, decision of 27 November 2013, § 15). In 2005, the UN General Assembly adopted by consensus a set of "Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Violations of International Human Rights and Serious violations of International Humanitarian Law." According to this instrument, the obligation to respect, ensure respect for and

implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, *inter alia*, the duty to “investigate violations effectively, promptly, thoroughly and impartially” (Basic Principles, par 3(b); see also, *inter alia*, *Bouyid v Belgium*, Judgment of 28 September 2015, §§ 114-123 and authorities cited; see, also, Article 6(1) and (3) and Article 11 of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA). Verifying that an authority has complied with these elements in turn requires some form of explanation for its decision to close or terminate an investigation both on findings of fact and the provisions of substantive law applied (see, again, *I against EULEX*, case no. 2013-01, decision of 27 November 2013, § 15). A reasoned explanation from the authorities is also consistent with the right of victims to be treated with dignity and with their right to the truth.

68. Furthermore, a lack of reasoned explanation or inadequate reasons given for the conclusion or termination of an investigation may be incompatible with the effective protection of rights, in particular a victim’s right to an effective remedy (see, e.g., *Hugh Jordan v The United Kingdom*, Judgment of 4 May 2001, in particular § 123; *Rodríguez v. Uruguay*, Communication No. 322/1988, U.N. Doc. CCPR/C/51/D/322/1988 (1994), § 6.3). This would be the case, for instance, if it deprives a victim of his or her right to an otherwise available remedy or deprive him or her in a concrete case of the effective use of that remedy.
69. The Panel notes that both the involvement of victims in the investigative process and the need for a reasoned explanation of the termination of that process are intended to create a sufficient degree of public scrutiny and a sense among victims that they have been treated fairly and that their search for justice has been diligently and effectively pursued by the authorities (see, generally, *Anguelova v. Bulgaria*, no. 38361/97, § 140, ECHR 2002-IV). Whilst the absence of adequate reasons in a particular case or a failure to involve victims might not mean that the authorities have failed to investigate a matter thoroughly, it might create that appearance for those involved. An effective remedy for the purpose of Article 13 should therefore be understood as one that demonstrably cared for the need to establish that the plaintiff’s case was dealt with fairly, diligently and effectively. How this is done in practice is better left to the particular circumstances of the case.
70. In this particular case, the complainants do not appear to have been informed of the course of the investigation at any point and were only informed that it had been terminated once the investigation was closed. The complainants were not apparently interviewed by the authorities.

71. The Panel's second concern is that the decisions of the EULEX Prosecutors to close the cases are not reasoned, in the sense of providing the complainants with guidance as to result of the investigation and reasons for closing it.
72. Whilst the duty to give reasons attaching to a judicial authority cannot be imposed to a similar extent to an investigative or prosecutorial authority, the absence of reason for closing an investigation might raise concerns from the point of view of Article 13 of the Convention. First, an explanation for terminating an investigation is essential to ensuring that the decision of the authorities is one that has not been based on any improper consideration, factor or assumption.
73. Because the authorities failed to involve the victims meaningfully in the process and their failure to give them clear reasons for terminating the investigation of each of the three matters discussed above (1989-5/2011; 3086-2/2011; 3985-8/2011), the Panel is not satisfied that the requisite element of public scrutiny has been satisfied in relation to any of these three cases. In those circumstances, the Panel considers that EULEX have violated the rights of the complainants under Article 13 of the Convention in relation to each and all of the three listed claims filed by the complainants.

*Alleged violations of Article 14 of the Convention*

74. The Panel considers that, having regard to its findings Articles 3, 8 and 13 of the Convention and the reasoning leading to thereto, the complaint under Article 14 does not give rise to any separate issues.
75. The Panel concludes that it is not necessary to examine separately the complaints under this provision of the Convention.

**FOR THESE REASONS,**

**THE PANEL, UNANIMOUSLY**

1. *Declares* the complaints under Article 3 of the Convention inadmissible as being manifestly ill-founded;
2. *Holds* by that there has been no violation of Article 8 of the Convention;
3. *Finds* a violation of Article 13 of the Convention;
4. *Holds* that it is not necessary to examine the case under Article 14 of the Convention.

and

## **DECLARES**

that in the light of its above findings of fact and law the Panel finds it appropriate to make recommendations to the HoM, and

## **RECOMMENDS THE FOLLOWING REMEDIAL ACTION**

- a. The HoM should make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainants' rights attributable to the acts [and/or omissions] attributable to EULEX in the performance of its executive mandate;
- b. The HoM should provide copy of the present Decision to the EULEX Prosecutors through the relevant channels. This should serve to inform the EULEX Prosecutors of the general nature of their obligation to involve victims into their investigations and to provide adequate reasons for terminating an investigation in a particular case.

For the Panel,

John J. RYAN  
Senior Legal Officer

Magda MIERZEWSKA  
Presiding Member